

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
2 DANA ALDEN FOX, SB# 119761
3 E-Mail: Dana.Fox@lewisbrisbois.com
4 TONY M. SAIN, SB# 251626
5 E-Mail: Tony.Sain@lewisbrisbois.com
6 TORI L. N. BAKKEN, SB# 329069
7 E-Mail: Tori.Bakken@lewisbrisbois.com
8 ABIGAIL J. R. McLAUGHLIN, SB# 313208
9 E-Mail: Abigail.McLaughlin@lewisbrisbois.com
10 633 West 5th Street, Suite 4000
11 Los Angeles, California 90071
12 Telephone: 213.250.1800
13 Facsimile: 213.250.7900

14 Attorneys for Defendants,
15 CITY OF ANAHEIM, JORGE
16 CISNEROS, PAUL DELGADO, BRETT
17 HEITMAN, KENNETH WEBER, and
18 CATALIN PANOV

19
20 **UNITED STATES DISTRICT COURT**
21
22 **CENTRAL DISTRICT OF CALIFORNIA**

23 ANTONIO LOPEZ, individually;
24 JOHANNA LOPEZ, individually; M.R.,
25 by and through his guardian ad litem,
April Rodriguez, individually and as
successor in interest to Brandon Lopez;
B.L. and J.L., by and through their
guardian ad litem Rachel Perez,
individually and as successor in interest
to Brandon Lopez; S.L., by and through
his guardian ad litem, Rocio Flores,
individually and as successor in interest
to Brandon Lopez,

26 Plaintiffs,

27 vs.

28 CITY OF ANAHEIM; CITY OF
SANTA ANA; DAVID VALENTIN;
JORGE CISNEROS; PAUL
DELGADO; BRETT HEITMAN;
KENNETH WEBER; CAITLIN
PANOV; DOES 1-10,

Defendants.

Case No. 8:22-cv-1351-JVS-ADS
[Hon. James V. Selna, Dist. Judge; Hon.
Autumn D. Spaeth, M. Judge]

DEFENDANTS' EVIDENTIARY
OBJECTIONS IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT OR
PARTIAL SUMMARY JUDGMENT

Filed Concurrently with Reply in
support of Motion for Summary
Judgment; Response to Plaintiffs'
Statements of Genuine Disputes of
Material Fact and Additional Material
Facts; Response to Plaintiffs'
Evidentiary Objections

Date: August 12, 2024
Time: 1:30 p.m.
Crtrm.: 10C

FPTC Date: September 9, 2024
Trial Date: September 17, 2024

1 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

2 Defendants CITY OF ANAHEIM, JORGE CISNEROS, PAUL DELGADO,
3 BRETT HEITMAN, KENNETH WEBER, and CATALIN PANOV submit the
4 following objections to the evidence and certain statements offered by Plaintiffs in
5 support of their opposition to Defendants' Motion for Summary Judgment or Partial
6 Summary Judgment.

Evidence	Objection
1. "An armored vehicle was quickly called to the scene and Brandon's vehicle was surrounded by police vehicles. Ex A – CAD report at p. 11 Exhibit B – Photographs of Scene from Department of Justice Report and Recommendations (hereinafter 'Ex B – DOJ Scene Photos')" [Dkt. 130-1, AMF No. 4 & Supporting Evidence.]	Misstates evidence. <i>See generally</i> F.R.E. 403. Lacks foundation. F.R.E. 403. Relevance as to Plaintiffs' Exhibit B. F.R.E. 401-403; <i>Graham v. Connor</i> , 490 U.S. 386, 396 (1989) ("The 'reasonableness' of a particular use of force must be judged from the perspective of the reasonable officer on the scene, rather than with the 20/20 vision of hindsight.").
2. "However, this was a mistake as it is undisputed that Brandon was not armed with any weapons and did not have any firearms with his vehicle. Exhibit C – Anaheim Police Department Report re Evidence Collection (hereinafter 'Ex C – Evidence Report')." [Dkt. 130-1, AMF No. 7 & Supporting Evidence]	Vague and ambiguous as to "mistake." Relevance. F.R.E. 401-403; <i>Graham v. Connor</i> , 490 U.S. 386, 396 (1989) ("The 'reasonableness' of a particular use of force must be judged from the perspective of the reasonable officer on the scene, rather than with the 20/20 vision of hindsight.").
3. "No officer saw Brandon point the alleged firearm at anyone or make any movements that made them believe	Misstates evidence. <i>See generally</i> F.R.E. 403.

1	Evidence	Objection
2 3 4 5 6 7 8	<p>Brandon intended to harm anyone. Moreover, Brandon was never observed making any aggressive or threatening movements during the incident.</p> <p>Ex A – CAD report, generally.”</p> <p>[Dkt. 130-1, AMF No. 9 & Supporting Evidence.]</p>	Lacks foundation. F.R.E. 403.
9 10 11 12 13 14 15	<p>4. “Shortly after Brandon’s vehicle became stuck, Brandon’s mother, Johanna Lopez, as well as several other family members, arrived on scene and congregated approximately one block from Brandon’s car. Ms. Lopez stood just on the other side of the police perimeter, as close as she could legally be to her son, and could see the intersection and at least three police cars and an armored vehicle.</p> <p>Exhibit D – Deposition of Plaintiff Johanna Lopez at 39:1-5, 42:3-13, 44:20-24, 46:22-47:4, 48:1-49:16, 50:22-6, 55:6-56:5 (hereinafter ‘Ex D – Johanna Lopez Depo’)”</p> <p>[Dkt. 130-1, AMF No. 10 & Supporting Evidence.]</p>	Misstates evidence. <i>See generally</i> F.R.E. 403. Lacks foundation. F.R.E. 403.
16 17 18 19 20 21 22 23 24 25 26 27 28	<p>5. “Ms. Lopez knew that her son was in the intersection and knew that he was surrounded by officers.</p> <p>Ex D – Johanna Lopez Depo at 39:24-40:18, 44:20-24, 46:22-47:4, 48:1-49:16, 50:22-6, 66:9-67:14.”</p> <p>[Dkt. 130-1, AMF No. 11 & Supporting Evidence.]</p>	Misstates evidence. <i>See generally</i> F.R.E. 403. Lacks foundation. F.R.E. 403.

1 Evidence	Objection
2 6. “Ms. Lopez remained on scene for the 3 duration of the Incident, pleading with the 4 officers to allow her to speak to her son. 5 Ex D – Johanna Lopez Depo. at 43:1-7, 6 51:25-52:25” 7 [Dkt. 130-1, AMF No. 12 & Supporting 8 Evidence.]	Misstates evidence. <i>See generally</i> F.R.E. 403. Lacks foundation. F.R.E. 403.
9 7. “At this time at least two additional 10 armored vehicles were brought in to 11 further surround the vehicle. 12 Ex B – DOJ Scene Photos” 13 [Dkt. 130-1, AMF No. 14 & Supporting 14 Evidence.]	Relevance as to Plaintiffs’ Exhibit B. F.R.E. 401-403; <i>Graham v. Connor</i> , 490 U.S. 386, 396 (1989) (“The ‘reasonableness’ of a particular use of force must be judged from the perspective of the reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”).
15 8. “The Defendant officers knew that 16 when they forced Brandon out of the car 17 that his only potential avenue of escape 18 was through the police perimeter. 19 Ex E – Panov BWC at 22:15-24:20, 20 27:30-28:00” 21 [Dkt. 130-1, AMF No. 16 & Supporting 22 Evidence.]	Conclusory unsupported opinion. F.R.E. 701. Lacks foundation. F.R.E. 403. Speculation. F.R.E. 701. Relevance. F.R.E. 401-403; <i>Graham v.</i> <i>Connor</i> , 490 U.S. 386, 396 (1989) (“The ‘reasonableness’ of a particular use of force must be judged from the perspective of the reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”).
24 9. “The Defendant officers also discussed 25 the terrain of the construction zone and 26 knew that it would force Brandon to 27 zigzag to avoid the obstacles.	Conclusory unsupported opinion. F.R.E. 701. Lacks foundation. F.R.E. 403. Speculation. F.R.E. 701.

1	Evidence	Objection
2	Ex E – Panov BWC at 22:15-24:20, 27:30-28:00, 33:50-34:40” [Dkt. 130-1, AMF No. 17 & Supporting Evidence.]	Relevance. F.R.E. 401-403; <i>Graham v. Connor</i> , 490 U.S. 386, 396 (1989) (“The ‘reasonableness’ of a particular use of force must be judged from the perspective of the reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”).
3	10. “The Defendants knew that these could be potential problems regardless of whether Brandon was armed, thus the plan was for less lethal to begin firing to subdue Brandon before he reached the perimeter to avoid the use of lethal force.	Conclusory unsupported opinion. F.R.E. 701. Lacks foundation. F.R.E. 403. Speculation. F.R.E. 701.
4	Ex E – Panov BWC at 22:15-24:20, 27:30-28:00, 33:50-34:40” [Dkt. 130-1, AMF No. 18 & Supporting Evidence.]	Relevance. F.R.E. 401-403; <i>Graham v. Connor</i> , 490 U.S. 386, 396 (1989) (“The ‘reasonableness’ of a particular use of force must be judged from the perspective of the reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”).
5	11. “Law enforcement also planned to deploy the police service dog off lead if he approached the perimeter to ensure the officers could safely take Brandon into custody.	Speculation. F.R.E. 701.
6	Ex E – Panov BWC at 22:15-24:20, 27:30-28:00, 33:50-34:40” [Dkt. 130-1, AMF No. 19 & Supporting Evidence.]	Relevance. F.R.E. 401-403; <i>Graham v. Connor</i> , 490 U.S. 386, 396 (1989) (“The ‘reasonableness’ of a particular use of force must be judged from the perspective of the reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”).
7	12. “Lethal force was designated as cover. Ex E – Panov BWC at 22:15-24:20, 27:30-28:00, 33:50-34:40”	Relevance. F.R.E. 401-403; <i>Graham v. Connor</i> , 490 U.S. 386, 396 (1989) (“The ‘reasonableness’ of a particular use of force must be judged from the perspective of the reasonable officer on

1 Evidence	Objection
2 [Dkt. 130-1, AMF No. 20 & Supporting 3 Evidence.]	the scene, rather than with the 20/20 vision of hindsight.”).
4 13. “In addition to lethal cover, the less 5 lethal 40 mm launcher, police service 6 dog, and a ballistic shield were staged 7 with the Defendant Officer, hidden behind one of the armored vehicles.	Conclusory unsupported opinion. F.R.E. 701. Lacks foundation. F.R.E. 403. Speculation. F.R.E. 701.
8 Ex A – CAD Report 9 Ex E – Panov BWC at 24:30-25:15, 10 1:15:00 11 Ex F – Delgado BWC at 02:30-03:00” 12 [Dkt. 130-1, AMF No. 24 & Supporting 13 Evidence.]	Relevance. F.R.E. 401-402; <i>Forrester v. City of San Diego</i> , 25 F.3d 804, 807-08 (9th Cir. 1994) (police officers “are not required to use the least intrusive degree of force possible”); <i>Bryan v. MacPherson</i> , 630 F.3d 805, 813 (9th Cir. 2015).
14 15 16 17 18 19 20 21 22 23 14. “There were no exigent circumstances or other legitimate law enforcement objectives that required the removal of Brandon at that time. Ex A – CAD Report, generally Ex E – Panov BWC at 0:00:00-1:18:00 Ex F – Delgado BWC at 00:00-55:00 Ex G – Weber BWC at 0:00:00-1:40:00” [Dkt. 130-1, AMF No. 27 & Supporting Evidence.]	Conclusory unsupported opinion. F.R.E. 702. Argumentative. Lacks foundation. F.R.E. 403. Speculation. F.R.E. 701.
24 25 26 27 28 15. “In fact, the Defendant Officers had been hiding behind the armored vehicle for almost an hour prior to shots being fired and no assaultive or threatening behavior by Brandon was reported or observed. By forcing Brandon out of the car, the Defendants forced an	Relevance. F.R.E. 401-403. Conclusory unsupported opinion. F.R.E. 702. Argumentative.

	Evidence	Objection
1	unnecessary confrontation and escalated the situation. Ex A – CAD Report, generally Ex E – Panov BWC at 0:00:00-1:18:00 Ex F – Delgado BWC at 00:00-55:00 Ex G – Weber BWC at 0:00:00-1:40:00” [Dkt. 130-1, AMF No. 28 & Supporting Evidence.]	Lacks foundation. F.R.E. 403. Speculation. F.R.E. 701.
2	16. “Moreover, it was clear that Brandon was in crisis as he was seen crying in the vehicle. Ex A – CAD Report at p.21” [Dkt. 130-1, AMF No. 29 & Supporting Evidence.]	Misstates evidence. <i>See generally</i> F.R.E. 403. Lacks foundation. F.R.E. 403. Conclusory unsupported opinion. F.R.E. 702. Speculation. F.R.E. 701.
3	17. “Brandon exited his vehicle holding only a small bag containing a plastic water bottle held down at his side. Ex C – Evidence Report Ex E – Panov BWC at 1:18:07-18:11 Ex F – Delgado BWC at 54:28-54:35 Ex G – Weber BWC at 1:38:46-1:38:55 Exhibit H – Still Frames from Defendant Panov’s Body Worn Camera (hereinafter “Panov BWC Still Frames”) Exhibit I – Still Frames from Defendant Delgado’s Body Worn Camera	Relevance. F.R.E. 401-403; <i>Graham v. Connor</i> , 490 U.S. 386, 396 (1989) (“The ‘reasonableness’ of a particular use of force must be judged from the perspective of the reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”). At the time of the incident, the Anaheim Officer Defendants did not know that Mr. Lopez was not armed, in fact, it had been expressly reported to them that Mr. Lopez <i>was armed</i> .
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1	Evidence	Objection
2	(hereinafter “Delgado BWC Still Frames”)	
3 4 5 6	Exhibit J – Still Frames from Defendant Weber’s Body Worn Camera (hereinafter “Weber BWC Still Frames”)	
7 8	[Dkt. 130-1, AMF No. 30 & Supporting Evidence.]	
9 10 11	18. “As Brandon exited, he began to jog in a line parallel to where the Defendant Officers were standing. Ex E – Panov BWC at 1:18:07-18:11.	Invades the province of the finder of fact. <i>See A.B. v. Cty. of San Diego</i> , 2020 U.S. Dist. LEXIS 136760, at *6 (S.D. Cal. July 31, 2020); <i>Zeen v. Cnty. of Sonoma</i> , 2018 U.S. Dist. LEXIS 13744, at *5-6 (N.D. Cal. Aug. 9, 2018).
12 13 14	Ex F – Delgado BWC at 54:28-54:35. Ex G – Weber BWC at 1:38:46- 1:38:55	Misstates evidence. <i>See generally</i> F.R.E. 403.
15 16 17	Exhibit H – Still Frames from Defendant Panov’s Body Worn Camera (hereinafter “Panov BWC Still Frames”)	Lacks foundation. F.R.E. 403.
18 19 20	Exhibit I – Still Frames from Defendant Delgado’s Body Worn Camera (hereinafter “Delgado BWC Still Frames”)	Conclusory unsupported opinion. F.R.E. 702.
21 22 23	Exhibit J – Still Frames from Defendant Weber’s Body Worn Camera (hereinafter “Weber BWC Still Frames”)	
24 25	[Dkt. 130-1, AMF No. 31 & Supporting Evidence.]	
26 27 28	19. “The Defendant Officers were still hidden behind an armored vehicle and there were several bright lights pointing	Invades the province of the finder of fact. <i>See A.B. v. Cty. of San Diego</i> , 2020 U.S. Dist. LEXIS 136760, at *6 (S.D. Cal. July 31, 2020); <i>Zeen v. Cnty.</i>

1	Evidence	Objection
2	directly at Brandon, obfuscating their location.	<i>of Sonoma</i> , 2018 U.S. Dist. LEXIS 13744, at *5-6 (N.D. Cal. Aug. 9, 2018).
4	Ex E – Panov BWC at 1:18:07-18:11.	Misstates evidence. <i>See generally</i> F.R.E. 403.
5	Ex F – Delgado BWC at 54:28-54:35.	
6	Ex G – Weber BWC at 1:38:46- 1:38:55	Lacks foundation. F.R.E. 403.
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8	Exhibit H – Still Frames from Defendant Panov’s Body Worn Camera (hereinafter “Panov BWC Still Frames”)	Conclusory unsupported opinion. F.R.E. 702.
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11	Exhibit I – Still Frames from Defendant Delgado’s Body Worn Camera (hereinafter “Delgado BWC Still Frames”)	Speculation. F.R.E. 701.
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14	Exhibit J – Still Frames from Defendant Weber’s Body Worn Camera	
15	(hereinafter “Weber BWC Still Frames”))	
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17	[Dkt. 130-1, AMF No. 32 & Supporting Evidence.]	
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19	20. “As Brandon moved forward, he was not looking in the direction of Defendant Officers.	Invades the province of the finder of fact. <i>See A.B. v. Cty. of San Diego</i> , 2020 U.S. Dist. LEXIS 136760, at *6 (S.D. Cal. July 31, 2020); <i>Zeen v. Cnty. of Sonoma</i> , 2018 U.S. Dist. LEXIS 13744, at *5-6 (N.D. Cal. Aug. 9, 2018).
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21	Ex E – Panov BWC at 1:18:07-18:11.	
22	Ex F – Delgado BWC at 54:28-54:35.	
23	Ex G – Weber BWC at 1:38:46- 1:38:55	Misstates evidence. <i>See generally</i> F.R.E. 403.
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25	Exhibit H – Still Frames from Defendant Panov’s Body Worn Camera (hereinafter “Panov BWC Still Frames”)	Lacks foundation. F.R.E. 403.
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28	Exhibit I – Still Frames from Defendant Delgado’s Body Worn Camera (hereinafter “Delgado BWC Still	Conclusory unsupported opinion. F.R.E. 702.

1	Evidence	Objection
2	Frames")	Speculation. F.R.E. 701.
3	Exhibit J – Still Frames from Defendant	
4	Weber’s Body Worn Camera (hereinafter	
5	“Weber BWC Still Frames”)	
6	[Dkt. 130-1, AMF No. 34 & Supporting	
7	Evidence.]	
8	21. “When Brandon did look towards the	Invades the province of the finder of
9	lights, his hands were down by his side,	<i>See A.B. v. Cty. of San Diego</i> ,
10	moving only with the natural movement	2020 U.S. Dist. LEXIS 136760, at *6
11	of his body.	(S.D. Cal. July 31, 2020); <i>Zeen v. Cnty.</i>
12	Ex E – Panov BWC at 1:18:07-18:11.	<i>of Sonoma</i> , 2018 U.S. Dist. LEXIS
13	Ex F – Delgado BWC at 54:28-54:35.	13744, at *5-6 (N.D. Cal. Aug. 9, 2018).
14	Ex G – Weber BWC at 1:38:46- 1:38:55	Misstates evidence. <i>See generally</i> F.R.E.
15	Exhibit H – Still Frames from Defendant	403.
16	Panov’s Body Worn Camera (hereinafter	“Panov BWC Still Frames”)
17	Exhibit I – Still Frames from Defendant	Lacks foundation. F.R.E. 403.
18	Delgado’s Body Worn Camera	
19	(hereinafter “Delgado BWC Still	Conclusory unsupported opinion.
20	Frames”)	F.R.E. 702.
21	Exhibit J – Still Frames from Defendant	Speculation. F.R.E. 701.
22	Weber’s Body Worn Camera (hereinafter	
23	“Weber BWC Still Frames”)	
24	[Dkt. 130-1, AMF No. 35 & Supporting	
25	Evidence.]	
26	22. “As Brandon crossed the tracks on	Invades the province of the finder of
27	the ground, his path of travel was blocked	<i>See A.B. v. Cty. of San Diego</i> ,
28	by a car and construction equipment, thus	2020 U.S. Dist. LEXIS 136760, at *6
	he changed direction slightly to attempt to	(S.D. Cal. July 31, 2020); <i>Zeen v. Cnty.</i>
		<i>of Sonoma</i> , 2018 U.S. Dist. LEXIS
		13744, at *5-6 (N.D. Cal. Aug. 9, 2018).

Evidence	Objection
<p>run past the car and toward the open street.</p> <p>Ex E – Panov BWC at 1:18:07-18:11</p> <p>Ex F – Delgado BWC at 54:28-54:35.</p> <p>Ex G – Weber BWC at 1:38:46- 1:38:55”</p> <p>[Dkt. 130-1, AMF No. 36 & Supporting Evidence.]</p>	<p>Misstates evidence. <i>See generally</i> F.R.E. 403.</p> <p>Lacks foundation. F.R.E. 403.</p> <p>Conclusory unsupported opinion. F.R.E. 702.</p> <p>Speculation. F.R.E. 701.</p>
<p>23. “He was not running at the officers, lunging, nor making aggressive movements towards anyone. Brandon never raised, swung, or pointed the bag at anyone.</p> <p>Ex E – Panov BWC at 1:18:07-18:11.</p> <p>Ex F – Delgado BWC at 54:28-54:35.</p> <p>Ex G – Weber BWC at 1:38:46- 1:38:55.”</p> <p>[Dkt. 130-1, AMF No. 37 & Supporting Evidence.]</p>	<p>Invades the province of the finder of fact. <i>See A.B. v. Cty. of San Diego</i>, 2020 U.S. Dist. LEXIS 136760, at *6 (S.D. Cal. July 31, 2020); <i>Zeen v. Cnty. of Sonoma</i>, 2018 U.S. Dist. LEXIS 13744, at *5-6 (N.D. Cal. Aug. 9, 2018).</p> <p>Misstates evidence. <i>See generally</i> F.R.E. 403.</p> <p>Lacks foundation. F.R.E. 403.</p> <p>Conclusory unsupported opinion. F.R.E. 702.</p> <p>Speculation. F.R.E. 701.</p>
<p>24. “Despite Brandon not presenting an immediate threat that would justify the use of deadly force, the defendants failed to follow their plan to use less lethal force first and did not utilize any of the options available to them.</p> <p>Ex E – Panov BWC at 1:18:07-18:12.</p> <p>Ex F – Delgado BWC at 54:28-54:35.”</p> <p>[Dkt. 130-1, AMF No. 38 & Supporting Evidence.]</p>	<p>Relevance. F.R.E. 401-402; <i>Forrester v. City of San Diego</i>, 25 F.3d 804, 807-08 (9th Cir. 1994) (police officers “are not required to use the least intrusive degree of force possible”); <i>Bryan v. MacPherson</i>, 630 F.3d 805, 813 (9th Cir. 2015).</p> <p>Conclusory unsupported opinion. F.R.E. 702.</p> <p>Argumentative.</p>

1	Evidence	Objection
2	25. “Brandon immediately started falling when the first shot struck him and hit the ground unresponsive, still, and bleeding profusely.	Misstates evidence. <i>See generally</i> F.R.E. 403.
3	Ex E – Panov BWC at 1:18:07-18:14.	Lacks foundation. F.R.E. 403.
4	Ex F – Delgado BWC at 54:28-54:35.	Conclusory unsupported opinion.
5	Ex G – Weber BWC at 1:38:46- 1:38:55.”	F.R.E. 702.
6	[Dkt. 130-1, AMF No. 40 & Supporting Evidence.]	
7	26. “Brandon, who was unarmed during the entire incident, was shot in the back four times, the right side eight times, the chest six times, and the right arm, hand, and shoulder area twelve times, for a total of at least 30 gunshot wounds.	Relevance. F.R.E. 401-403; <i>Graham v. Connor</i> , 490 U.S. 386, 396 (1989)
8	Ex C – Evidence Report.	(“The ‘reasonableness’ of a particular use of force must be judged from the perspective of the reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”). At the time of the incident, the Anaheim Officer Defendants did not know that Mr. Lopez was not armed, in fact, it had been expressly reported to them that Mr. Lopez <i>was armed</i> .
9	Exhibit K – Autopsy Report 17-19”	
10	[Dkt. 130-1, AMF No. 43 & Supporting Evidence.]	
11	27. “Ms. Lopez was still standing approximately one block away when her son was shot. Ms. Lopez heard both the flashbang explosions and the gunshots from where she stood.	Misstates evidence. <i>See generally</i> F.R.E. 403.
12	Ex D – Johanna Lopez Depo at 59:23-62:24”	
13	[Dkt. 130-1, AMF No. 44 & Supporting Evidence.]	
14	28. “Ms. Lopez thereafter heard the gunshots from the intersection.	Misstates evidence. <i>See generally</i> F.R.E. 403.
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Evidence	Objection
Ex D – Johanna Lopez Depo at 61:16-62:8" [Dkt. 130-1, AMF No. 46 & Supporting Evidence.]	

DATED: July 29, 2024

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Abigail J.R. McLaughlin

DANA A. FOX

TONY M. SAIN

TORI L. N. BAKKEN

ABIGAIL J.R. McLAUGHLIN

Attorneys for Defendants,

CITY OF ANAHEIM, JORGE

CISNEROS, PAUL DELGADO, BRETT

HEITMAN, KENNETH WEBER, and

CATALIN PANOV